

# Calendar No. 1289

77TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 1250

## EDWARD KEATING AND OTHERS

APRIL 3 (legislative day, MARCH 30), 1942.—Ordered to be printed

Mr. ROSIER, from the Committee on Claims, submitted the following

### REPORT

[To accompany H. R. 4180]

The Committee on Claims, to whom was referred the bill (H. R. 4180) for the relief of Edward Keating and others, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1861, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1861. 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 4180) for the relief of Edward Keating, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 5, after the name "Keating", strike out the remainder of the bill to line 14, page 2, preceding the word "*Provided*", insert in lieu thereof "\$2,953.97 for the death of his son, Jack Keating; to pay the sum of \$1,215 to Luther Burch, as guardian of Dean Burch, minor; to pay the sum of \$725 to John Fick, as guardian of Charles Fick, minor, all of Nelsonville, Ohio, in full settlement of all claims against the United States for the death of Jack Keating and the injuries of Dean Burch and Charles Fick sustained when an excavation caused by the removal of earth by the Works Progress Administration caved in on them, resulting in the death and injuries on August 30, 1936, in Nelsonville, Ohio".

Amend title to bill to read "A bill for the relief of Edward Keating and others."

The purpose of the proposed legislation is to pay the sum of \$2,953.97 to Edward Keating, father of Jack Keating, in full settlement of all claims against the

United States for the death of his son, as the result of the fatal injury received by him at Nelsonville, Ohio, on the 30th day of August 1936; and to pay the sum of \$1,215 to Luther Burch, as guardian of Dean Burch, and to pay the sum of \$725 to John Fick, as guardian of Charles Fick, all of Nelsonville, Ohio, for injuries received at Nelsonville, Ohio, at the same time and place.

#### STATEMENT OF FACTS

During the summer of 1936 the Works Progress Administration was engaged in the construction of a project at Nelsonville, Ohio. In carrying out this project, it was necessary to provide and haul a large quantity of dirt which was procured by steam shovel processes from an embankment, which was a part of a playground that had been used by the children of the community for many years. The place of excavation was a deep pit from which gravel and sand and other materials were being taken. On Sunday, August 30, 1936, Jack Keating, a young lad 14 years of age, went with his dog, as was his custom, to the playground. Soon thereafter in playing with two small boys, Dean Burch and Charles Fick, near the pit which had been left without guards or danger signals, the overhanging top of the pit gave way and fell down in upon the boys causing the death of Jack Keating and serious and permanent injuries to Dean Burch and serious injuries to Charles Fick.

Your committee feel that there was negligence on the part of the project supervisor in not seeing that there was some notice of the excavation or sign of danger.

Your committee therefore recommend that injured parties should be compensated by reason of this unfortunate occurrence.

H. R. 4180 was originally filed only for the relief of Edward Keating. The Works Progress Administration has indicated a very fair spirit with reference to this unfortunate occurrence. Through Mr. Corrington Gill, the Assistant Commissioner, it has been recommended that your committee give consideration to the claims that would naturally arise from injuries suffered by Dean Burch and Charles Fick. In commenting on this situation Mr. Gill says:

"It may be, therefore, that your committee will desire to amend the bill to provide for relief of Dean Burch and Charles Fick." He further says: "In the event that the bill is so amended it is suggested that the appropriations in such amount as the Congress deems proper be made payable to the legal guardians of the infants in order that the appropriations may be expended for the benefit of the said infants under the laws of the State of Ohio."

Because of all the circumstances in the case Mr. Gill in his letter to your committee states that Works Progress Administration will interpose no objection to the enactment of relief legislation for the injured parties herein for such sums as Congress may deem wise.

Your committee therefore recommends that a bill with amendments be enacted to provide for the payment to Edward Keating, father of Jack Keating, the sum of \$2,500 plus \$453.97, expenses, making a total of \$2,953.97; to Luther Burch, as guardian of Dean Burch, the sum of \$1,215; and to John Fick, the guardian of Charles Fick, the sum of \$725.

Appended to this report is a letter to your committee from the Works Progress Administration.

Receipts properly sworn to for all expenses claimed by injured parties above referred to are on file with your committee.

FEDERAL WORKS AGENCY,  
WORK PROJECTS ADMINISTRATION,  
Washington, D. C., August 28, 1941.

The Honorable DAN R. McGEHEE,  
*Chairman, Committee on Claims, House of Representatives.*

DEAR MR. McGEHEE: Reference is made to your letter of August 8, 1941, and my acknowledgment of August 11, 1941, relative to H. R. 4180, a bill for the relief of Edward Keating, and requesting a report thereon.

The Administration's report is as follows:

The bill proposes to appropriate to Edward Keating, father of Jack Keating, the sum of \$5,000, "in full settlement of all claims of the said Edward Keating against the United States for the death of his son, Jack Keating, as the result of a fatal injury received by him at Nelsonville, Ohio, on the 30th day of August 1936. Said fatal injury was a direct result of the negligence and carelessness of foremen and employees of Works Progress Administration which had in the furtherance of its work in that vicinity assumed to cut away a large portion of a public playground which had been used by the children in that community for many years; that the negligence and carelessness of said foremen and employees consisted of their having by the use of a steam shovel made large and extensive excavations in said playground and had taken great quantities of sand from the same and had left the same with high, steep, and dangerous banks. While Jack Keating and other children were playing near one of these large excavations a sandbank which had been left unguarded and unprotected came down upon said children and covered and killed Jack Keating."

It appears that, during August 1936, a Works Progress Administration project, official project 65-42-5584, was engaged in constructing an athletic field and public playground in Nelsonville, Ohio, for the board of education of that city; that, for the purpose of leveling and preparing the field for seeding, it was necessary to haul several hundred yards of dirt to it; that, pursuant to its obligation as project sponsor to furnish the dirt, the board of education, through its agent, the superintendent of schools, entered into an oral agreement with the owners of the property adjacent to the athletic field whereby the requisite dirt was to be procured from such property; and that project employees were assigned to obtain and haul this dirt. Investigation discloses that the dirt was obtained from a borrow pit located approximately 75 feet east of the project line of the athletic field. The pit was approximately 10 feet deep in earth that consisted of about 4 feet of topsoil which was loam, a layer of sand thereunder from 12 to 15 inches thick, and a gravel formation at the bottom.

On Sunday, August 30, 1936, Jack Keating, aged 14 years, with two other boys about the same age, were playing in the borrow pit when the top of the bank caved in upon them. It appears from investigation, however, that the boys had dug holes in the bank which caused the subsequent cave-in. The project watchman reports that he had warned the boys on several occasions against walking on top of the bank, climbing upon forms and other things that appeared to him to be dangerous; that at times they had heeded his warnings and at other times had answered him contemptuously; that, on Saturday, August 29, 1936, he warned the boys playing in the pit about the danger of falling dirt; that they refused to stop playing at this location and told him that, since they were outside of the fence, it was none of his business as to what they were doing and that, on Sunday, August 30, 1936, just a short time before the accident, he again warned them and received the same answer as had been given him the previous day.

It appears from a statement of facts submitted by John P. Kelso, attorney at law, Nelsonville, Ohio, that approximately 300 yards from the sand pit is a "swimming hole" in the Hocking River, which has been used by boys of all ages for many years; that a well-beaten path to this favorite spot of the boys lies within 150 feet of the sand pit; that for many years, boys going to and from the old swimming hole often stopped in this field to play, as boys are wont to do; and that the field, wherein the sand pit was located, was really a playground for children and had been used as such for a long time, particularly for children in that neighborhood. Attorney Kelso also states that Edward Keating, the deceased boy's father, is a man of approximately 50 years of age; that he has a small barber shop located in the east end of town, away from the business district of Nelsonville; that his business grosses approximately \$10 per week; that he is married, living with his wife, and has three children living at home, all of whom were minors at the time of the accident and entirely dependent upon him; that Mr. Keating is a highly respected citizen of Nelsonville, but is not in a financial position to afford the loss he sustained nor the expenses to which he was subjected; and that the hospital, doctor's, and funeral bills, approximately \$700, are still due and unpaid.

As a result of the cave-in, Jack Keating sustained a compound fracture of the right ankle, fracture of the left arm, and body contusions from which he died on September 2, 1936.

In view of the above, which establishes that Jack Keating died as a result of injuries sustained by reason of project operations of the Works Progress Administration, and in view of the poor financial condition of the deceased child's parents,

this Administration will interpose no objection to the enactment, by the Congress, of the proposed legislation, as a matter of grace.

The attention of your committee is invited to the fact that Dean Burch and Charles Fick, aged 10 and 13 years, respectively, were playing in the borrow pit with Jack Keating when the bank caved in upon them. Dean Burch, son of Luther Burch, 582 High Street, Nelsonville, Ohio, sustained a "fractured left upper arm near the shoulder of the arm, dislocating same and fracture of the bone in the back connecting the shoulder of left side." Charles Fick, son of John Fick, 505 Jackson Street, Nelsonville, Ohio, sustained a fractured left wrist and numerous bruises about the body and head. It may be, therefore, that your committee will desire to amend the bill to provide for relief of Dean Burch and Charles Fick. In the event that the bill is so amended, it is suggested that the appropriations, in such amounts as the Congress deems proper, be made payable to the legal guardians of the infants in order that the appropriations may be expended for the benefit of said infants under the laws of the State of Ohio.

There are enclosed photostatic copies of pertinent papers from the files of this Administration.

Sincerely yours,

BURTON E. PALMER,  
For CORRINGTON GILL,  
Assistant Commissioner.

NELSONVILLE, OHIO, November 3, 1941.

MEMBERS OF UNITED STATES CONGRESS,  
Washington, D. C.

GENTLEMEN: I have been asked to write a letter in regard to the injury received by Dan Burch of Nelsonville, Ohio, who was injured on August 30, 1936, at a Works Progress Administration project at the Nelsonville High School athletic field.

The boy received a fracture of the head of the left humerus with a dislocation of the shaft of the humerus into the axilla. Also bruises and contusions of the chest and other parts of his body. He was brought to me the following day after his own physician was unable to set the fracture. I removed him to Marietta Osteopathic Hospital, Marietta, Ohio, where we reduced the fracture and applied an aeroplane cast. This cast was worn for 10 weeks and then removed and treatments to break down adhesions and bring back normal functions to the shoulder was applied.

He has made a very good recovery and his only complaint is that he has difficulty in sleeping on his left side and that he has intermittent neuralgia pains in his shoulder and arm.

Personally I would judge that this boy has suffered from his injury and I believe has about 85 percent normal function of his shoulder. Therefore any award of compensation that the Congress of the United States can see fit to award this boy will be greatly appreciated and will do a lot toward reimbursing him for the expenses he incurred when injured.

DR. L. E. BUTTS.

NELSONVILLE, OHIO, October 31, 1941.

Re: Charles Fick, Nelsonville, Ohio.

The Honorable THOMAS A. JENKINS,  
House of Representatives, Washington, D. C.

DEAR MR. JENKINS: Pursuant to a communication which you had written to Mr. Edward Keating, 633 Jackson Street, Nelsonville, Ohio, regarding the accident which occurred in Nelsonville in 1936 involving severe injuries to three boys and resulting in the death of one of them, I am including our report of the original injury in the case of Charles Fick.

On August 29, 1936, as a result of a sand and gravel slide Charles Fick had the following injuries:

1. Fracture of the left radius.
2. Fracture of the right humerus near the shoulder joint.
3. Multiple bruises and contusions over the body.
4. General shock.

As a result of these injuries the patient was confined to his bed for a period of 6 weeks and after that was still totally disabled for 4 weeks. At the present time Charles has good use of the right arm and the left arm. These fractures have



healed in good shape. There are no permanent disabilities in his case. According to the parents Charles missed 8 weeks of school and for a period of 1 to 2 months following that was at least partially disabled. Total disability covered a period of about 10 weeks and partial disability following that covered a period of about 4 weeks.

Very truly yours,

W. H. HYDE, M. D.

STATE OF OHIO,  
Athens County, ss:

John Fick, being duly sworn, says that he is the father of Charles Fick who was injured as a result of the fall of sand and gravel on a public works project on the 30th day of August 1936:

That incident to the injury of his said son, this affiant has been compelled to incur obligations for medical treatment, hospital service, and other expenses in the sum of \$40 plus \$100, nursing and supplies; that attached herewith are itemized statements of said obligations thus incurred with credits, if any, shown thereon.

JOHN FICK.

Sworn to and subscribed before me, a notary public in and for Athens County, Ohio, this 8th day of December A. D. 1941.

[SEAL]

My commission expires August 22, 1944.

MARY B. STOUT, Notary Public.

\$453.97

NOVEMBER 28, 1941.

To Jack Keating (deceased; father, Ed Keating, Nelsonville, Ohio): For professional services, August 30, 1936, treatment for shock. First aid. Applying transportation splints, \$25.

DR. L. E. BUTTS.

November 28, 1941, subscribed and sworn before me, a notary public, Athens County, Ohio, by L. E. Butts.

[SEAL]

MARY B. STOUT.

My commission expires August 22, 1944.

NELSONVILLE, OHIO, November 27, 1941.

Mr. Edward Keating, Nelsonville, Ohio, in account with C. L. Stout Funeral Home for burial of Jack Keating.

Sept. 4, 1936: Casket, embalming, hearse, and services.....	\$135.00
Vault.....	65.00
Ambulance to Marietta (two trips).....	20.00
Grave.....	7.00
Tax.....	3.97
Total.....	230.97
Sept. 4, 1936: Credit by cash.....	7.00
Sept. 21, 1938: Credit by cash.....	170.00
Apr. 4, 1939: Gave mortgage on home.....	53.97
Total.....	230.97

C. L. STOUT.

Sworn to and subscribed before me, a notary public, this 27th day of November 1941.

[SEAL]

MARY B. STOUT, Notary Public.

My commission expires August 22, 1944.

## THE MARIETTA OSTEOPATHIC CLINIC,

Marietta, Ohio, November 27, 1941.

To Jack Keating (deceased):		
Aug. 30, 1936:	X-ray-----	\$10. 00
	Care of fracture—tibia and fibula-----	75. 00
	Body and leg cast-----	35. 00
Aug. 31, 1936:	Laboratory-----	3. 00
Sept. 2, 1936:	Care of fracture, humerus-----	75. 00
	Hospital account-----	29. 30
		<hr/>
Sept. 25, 1936:	By cash-----	29. 30
	Balance-----	198. 00

STATE OF OHIO,

County of Washington:

This is to certify that Paul L. Riemann, general manager, appeared before me and swears that the above statement is a true and correct statement as it stands on the books of the Marietta Osteopathic Clinic.

Sworn to and subscribed before me this 27th day of November 1941.

[SEAL]

F. M. EDE, *Notary Public.*

My commission expires November 10, 1942.

NELSONVILLE, OHIO, December 4, 1941.

The CONGRESSIONAL COMMITTEE,

Washington, D. C.

DEAR SIRs: This is to certify that Mr. Luther Burch's son, Dean Burch, was injured August 30, 1936, at the Nelsonville playground, at which time he received the following injuries:

A fractured left humerus at the surgical neck with a dislocation of the shaft of the humerus at the axillary space and a rotation of the head of the humerus upward until the fragment ends were embedded in the deltoid muscles.

He was also crushed through the chest and suffered from shock. He was treated for shock and the fracture was reduced, and placed in a plaster paris cast from his waist up and including the left arm, which was carried in a hyper-extension position for a period of 8 weeks. Then the cast was removed and passive motion was used to bring back normal function to the arm and shoulder.

He was fully recovered from this injury to the extent that he is able to use the arm and his only complaint is that he has pain in the shoulder joint and arm and at nights he is unable to lay flat on his back. At times he is unable to sleep due to pain which I believe is caused from the injury to the nerves that supply the shoulder and arm. These nerves were injured by the fragment ends of bones at time of injury.

I believe that in time this condition will clear up but I do believe he will always have a 15- or 25-percent disability of the arm and shoulder.

L. E. BUTTS, D. O.

Sworn to and subscribed before me, a notary public in and for Athens County, this 4th day of December 1941.

[SEAL]

ED C. EVANS,  
*Notary Public, Athens County, Ohio.*

My commission expires February 2, 1942.

NELSONVILLE, OHIO, November 28, 1941.

To Dean Burch (father, Luther Burch), Nelsonville, Ohio, for professional services, September 19, 1936, X-ray on removal of cast, \$10.

Dr. L. E. BUTTS.

November 28, 1941, subscribed and sworn before me, a notary public, Athens County, Ohio, by L. E. Butts.

[SEAL]

MARY B. STOUT.

My commission expires August 22, 1944.

NOVEMBER 27, 1941.

STATEMENT FROM THE MARIETTA OSTEOPATHIC CLINIC, MARIETTA, OHIO, TO  
DEAN BURCH

1936

Aug. 31. Laboratory-----	\$3. 00
Sept. 1. X-ray, cast, fracture reduction-----	63. 66
Hospital account-----	8. 34
5. Cash-----	\$66. 66
Cash-----	8. 34

STATE OF OHIO,

*County of Washington:*

This is to certify that Paul L. Riemann, general manager, appeared before me and swears that the above statement is a true and correct statement as it stands on the books of the Marietta Osteopathic Clinic.

Sworn to and subscribed before me this 27th day of November 1941.

[SEAL]

F. M. EDE, *Notary Public.*

My commission expires November 10, 1942.

NELSONVILLE, OHIO, November 29, 1941.

*To Whom It May Concern:*

This is to certify that I X-rayed William D. Burch August 30, 1936, and found a fracture of the upper end of the left humerus. X-ray cost \$10.

Respectfully,

C. G. DEW.

Sworn to and subscribed before me a notary public in and for Athens County, Ohio, this 29th day of November 1941.

[SEAL]

ED C. EVANS, *Notary, Athens County, Ohio.*

My commission expires February 2, 1942.

STATE OF OHIO,

*Athens County, ss:*

Luther Burch, being duly sworn, says that he is the father of Dean Burch who was injured as a result of the fall of sand and gravel on a public works project on the 30th day of August 1936:

That incident to the injury of his son, this affiant has been compelled to incur obligations for medical treatment, hospital service, and other expenses in the sum of \$215; that attached herewith are itemized statements of said obligations thus incurred with credits, if any, shown thereon.

LUTHER M. BURCH.

Sworn to and subscribed before me, a notary public in and for Athens County, Ohio, this 29th day of November A. D. 1941.

[SEAL]

ED C. EVANS, *Notary Public.*

My commission expires February 2, 1942.

STATE OF OHIO,

*Athens County:*

Being duly sworn, I, Hazel Burch, being the mother of Dean Burch who was injured by a fall of sand and gravel on a public works project on the 30th day of August 1936.

That incident to the injury of my son I have a 10 weeks' nursing bill at \$10 per week owing to the fact that he was unable to help himself during the period he was in cast and for 3 weeks thereafter I had to care for him day and night.

Also I have a bill of \$10 transportation charge. This was incurred taking him to and from hospital. There is a \$10 bill for clothing. Everything he wore during the time he was in cast had to be cut and were of no use after cast was removed. This makes a total of \$120.

HAZEL BURCH.

Sworn to and subscribed before me a notary public in and for Athens County this 29th day of November 1941.

[SEAL]

ED. C. EVANS, *Notary, Athens County.*

My commission expires February 2, 1942.

NELSONVILLE, OHIO, *January 1940.*

Charles Fick, the son of John Fick, was injured on August 30, at which time he received a fracture of the left radius, general bruises and contusions about the body, and a fracture of the right humerus near the shoulder joint.

The charge made for services for care of fracture, X-rays, and visits to home, \$40.

W. H. HYDE, M.D.

NELSONVILLE, OHIO, *November 3, 1941.*

*Members of the United States Congress, Washington, D. C.*

GENTLEMEN: I have been asked by the parents of Charles Fick (who was injured on August 30, 1936, at the Nelsonville High School athletic field, which was under Works Progress Administration project at that time) to write to you.

I did not attend the Fick boy for his injuries but I did make a physical examination on October 27, 1941, and found that he had suffered from a fractured arm and fractured scapula. These fractures have healed with very little impairment of function. He also has a blowing murmur of the bicuspid valve of the heart which could have been aggravated by such an injury and which is bad enough at present time to prevent him from participating in any athletics or any physical strain.

So in considering this case I believe it only fair if he is awarded compensation for expenses incurred at the time of injury and that some consideration should be allowed for his present physical disability which might have been brought about or at least exaggerated by the injuries he received on August 30, 1936.

DR. L. E. BUTTS.

NOVEMBER 5, 1941.

DEAR SIR: The bill following is for my son Charles Fick.

Doctors-----	\$75. 00
X-ray-----	30. 00
Nursing-----	100. 00
Extra supplies-----	20. 00
	<hr/>
	225. 00

JOHN FICK.